

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 2.59.1401, 2.59.1402, 2.59.1405,)	ON PROPOSED AMENDMENT
2.59.1406, 2.59.1409, 2.59.1410,)	AND ADOPTION
2.59.1413, 2.59.1414, and 2.59.1417)	
pertaining to the regulation of title lenders)	
and the proposed adoption of NEW)	
RULES I through IX regarding title loan)	
designation, notification to the)	
department, rescinded loans, failure to)	
correct deficiencies, department's cost of)	
administrative action, examination fees,)	
required record keeping, sale of)	
repossessed property, and unfair practice)	

TO: All Concerned Persons

1. On May 29, 2008, at 10:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on May 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.1401 DEFINITIONS For the purposes of the Montana Title Loan Act and this subchapter, the following definitions apply:

(1) "Borrower" in the case of jointly owned property, means all owners of the property listed on the title.

(1) and (2) remain the same, but are renumbered (2) and (3).

~~(3) "Extension" means an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.~~

(4) remains the same.

(5) "Fraud or financial dishonesty" includes, but is not limited to:

(a) a conviction, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a conviction that involves robbery, illegal gambling, receiving stolen property, counterfeiting, extortion, check, credit card, or computer violations set forth in criminal laws, deception, fraud, theft, embezzlement, defrauding a creditor, issuing a bad check, deceptive practices, deceptive business practices, misappropriation of funds or property, misrepresentation, omission of material facts, unauthorized use of property, forgery, identity theft, or money laundering.

(6) "Fraudulent or dishonest financial dealings" includes, but is not limited to:

(a) a civil judgment, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a civil judgment that involves deception, fraud, conversion, misappropriation of funds, misrepresentation, omission of material facts, forgery, unauthorized use of money or property, failure to pay taxes, or bad checks.

(5) (7) "Redemption date" is the maturity date of the original title loan and any subsequent renewals or extensions.

(6) (8) "Renewal of a loan" means extension an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.

(9) "Restitution" may include, but is not limited to, refunds of any or all the interest and fees paid by the borrower and voiding any lien or security interest obtained in violation of the Title Loan Act.

(10) "Unencumbered title" or "clear title" means a valid state-issued certificate of title that has no liens or encumbrances attached.

AUTH: 31-1-802, MCA

IMP: 31-1-803, 31-1-804, 31-1-805, 31-1-810, 31-1-811, 31-1-812, 31-1-816, 31-1-818, 31-1-820, 31-1-815, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to add section (1) to the current rule because it has become apparent from examinations of title lenders, and from complaints by individuals, that title lenders have been making title loans on jointly held personal property to one joint owner listed on the title. In some cases, the other joint owner listed on the title had no knowledge of the loan whatsoever until the titled personal property, generally a vehicle, is repossessed for nonpayment of the loan. In the case of a jointly held title, one joint owner can place a lien on the property, for instance a vehicle, without the knowledge and consent of the other joint owner. However, the joint owner without knowledge (hereinafter "the innocent spouse") must be given notice of the right of redemption and the title lender must go to district court for an apportionment of the respective interest held by each party in the vehicle. If the innocent spouse does not redeem the vehicle by paying all principle, interest, and penalties due, the title lender may sell the vehicle. However, after sale, the title lender must return the innocent spouse's share of the sale proceeds as apportioned by the court. At this time, title lenders are not following the proper procedure in the case of jointly held titles. The division proposes this new section because it believes that, in the case of titled personal property with two or more joint owners, all owners of the property should be aware

of, and consent to, a lien that is placed on the property. The division believes that it is unfair to allow one of two or more joint owners to place a lien on the property without the knowledge of the other joint owner(s). Therefore, it proposes this rule to require that all joint owners of titled personal property be treated as a "borrower" under the Montana Title Loan Act (Act). This will require that all joint owners sign for the title loan, consent to a lien being placed on the property, receive notice of amounts past due on the loan, receive notice of the right to rescission, and receive notice of the repossession of the titled personal property and right to redeem the property.

The division proposes to delete section (3) and portions of section (7) and (8) since all references to "extensions" were deleted as part of Senate Bill 74 enacted in the 2007 legislative session. Pursuant to 2-4-305(6)(a), MCA, an adoption, amendment, or repeal of a rule is not valid or effective unless it is consistent and not in conflict with the statute. The existing rule is in conflict with the amended statutes and therefore all references to "extension" must be deleted.

The division proposes to define two terms that are not currently defined in the rules; they are "fraud or financial dishonesty" and "fraudulent or dishonest financial dealings" as used in 31-1-805, MCA. Section (5) clarifies which types of convictions involving fraud or dishonesty may be taken into consideration in order to deny an application for licensure. The division has seen several instances in which licensees disclosed convictions involving theft, unauthorized use of property, burglary, and bad checks. However, at this time, there is no definition of fraud or dishonesty. The division believes the statutory authorization is such that these types of convictions were, in fact, intended to be included within the division's discretion to deny applications for licensure. The division chose this particular approach because other rules adopted by the division in regulating other areas use the same types of convictions to deny licensure.

Section (6) defines the types of adverse civil judgments which will be considered by the division as grounds to deny an application for licensure. The new section defines and specifies the types of financial misconduct to include various types of civil judgments that are fraudulent and dishonest. The division has seen applications in which applicants have civil actions against them for fraud, as well as various judgments for nonpayment of taxes owed. While some of these actions are normal business disputes, some of them are markedly different in that they involve fraud or dishonest dealings. It is the fraud or dishonest dealings that rise to the level of a judgment that the division would look closely at in the licensing process. Of course, any action to deny a license must be accompanied by notice and an opportunity for hearing. The division chose this particular approach because other rules it administers define these types of civil judgments as grounds to deny a license.

The division proposes to define "renewal" in section (8) because the old definition which defined renewal as an extension is no longer correct statutory language, since all references to extension were removed by the 2007 Legislature in SB74. The division believes it is important to define renewal. Section 31-1-816(2)(d), MCA, gives the lender the ability to renew the title loan if it is not paid in full at the expiration of its term. Beginning with the sixth renewal, the lender must reduce the principal balance amount owed by 10% for the sixth and each

subsequent renewal. Renewal in this context means to extend the due date of the loan without altering the other terms of the contract or releasing the security for the loan. "Renewal" is also used in the context of a license. However, that is not what the division proposes to define by this rule. So the division added the phrase "of a loan" to the definition of renewal to make clear that the rule defines renewal of a loan, not renewal of a license.

The division proposes to define restitution in section (9) because 31-1-811, MCA, allows the division to issue an order requiring restitution to the borrowers. Restitution means making the borrower whole. In order to provide restitution to borrowers, the division needs to be able to order the refund of interest and fees paid by borrowers. In addition, 31-1-825(2), MCA, provides that if a title lender enters into a transaction contrary to 31-1-825, MCA, any lien or security interest obtained by the title lender is void. If a lender acts in a manner contrary to the statute, in order to make the borrower whole, it may be necessary to void the lien that the lender has placed against the borrower's titled personal property. The division chose this approach because the term is an important concept in 31-1-811, MCA, and this definition is needed to address making the borrower whole.

The division proposes to define unencumbered title in section (10) because 31-1-803(8), MCA, defines a title loan in relevant part as "a nonpurchase money loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property that is designated as a title loan by the department." The concept of unencumbered means a title that has no liens or encumbrances attached. In 31-1-825, MCA, the lender is prohibited from entering into a title loan agreement unless the borrower presents clear title to the titled personal property. The division believes that these two terms are synonymous. These two statutes are for the protection of the lender. They are designed to ensure that there are no prior liens on the vehicle. The division chose this approach because it makes sense to define unencumbered or clear title in this context.

2.59.1402 LICENSING AND APPLICATION REQUIREMENTS - EXCEPTIONS (1) Except for those entities listed in (2), all persons or lenders must obtain a license under this rule in order to issue title loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, ~~and~~ or Deferred Deposit Loan Act, 31-1-701, MCA, are not exempt from the licensing requirements of 31-1-801, MCA.

(2) through (5)(a) remain the same.

(b) information concerning the applicant's character, experience, qualifications; ~~and~~

(c) financial information about the applicant; ~~and-~~

(d) the interest calculation tool or program that the applicant will use to calculate interest on title loans and interest rate reductions that occur beginning with the sixth renewal of a title loan.

AUTH: 31-1-802, MCA

IMP: 31-1-804, 31-1-805, 31-1-811, 31-1-816, 31-1-817, MCA

STATEMENT OF REASONABLE NECESSITY: The division is amending section (1) to substitute "or" for "and" in the first sentence of the rule. The rule currently states that persons who are licensed as both consumer lenders and deferred deposit lenders are not exempt from licensure under the Title Loan Act. The rule should say persons who are licensed under either the Consumer Loan Act or the Deferred Deposit Loan Act are not exempt from licensure under the Title Loan Act.

The division proposes to add subsection (5)(d) to the rule because the division has seen widespread confusion among title lenders regarding the calculation of interest on title loans as well as the interest rate reductions that occur starting with the sixth renewal of the title loan. The division often discovers errors in interest calculations done manually or through the use of computer programs when the division examines title lenders. The division would like to be able to review the interest calculation method the applicant proposes to use when an applicant applies for the license. If interest rate calculations are done improperly, the lender must correct the errors in their calculations which either results in a loss to the lender or the borrowers. In some cases, the title lender must refund sums to borrowers that were improperly charged due to faulty interest calculations.

2.59.1405 OWNERSHIP CHANGE (1) In the event there is a change of ownership in a licensee, the owner(s) shall file with the department an application for a new license. The applicant may not make any loans until they have been appropriately licensed. ~~For purposes of this rule, a change in ownership includes circumstances when 25% or more of the ownership is transferred to a new owner.~~

(2) For purposes of this rule, a person shall be deemed to own the licensee if the person, directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with the power to vote, or holds proxies representing 25% or more of the voting shares or rights of such company, or controls in any manner the election or appointment of 25% of the directors, managers, member-managers, or trustees of a company, or is a general partner in or has contributed 25% or more of the capital of the company.

AUTH: 31-1-802, MCA

IMP: 31-1-805, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to amend this rule to make clear that a change in ownership requires a new application which must be approved before the new entity can make any loans and to define ownership. At the present time there are no rules that define what a change of ownership means and no rules as to what happens on a change of control. The division routinely gets questions about what constitutes a change in ownership and whether an entity that was licensed can apply for a new license and continue on in business. The division seeks to make clear the types of transactions that constitute a change in ownership. Since the change in ownership is significant, the new entity needs to apply for a new license and must be treated as a new applicant, in that they cannot make loans until they are properly licensed.

2.59.1406 EXAMINATION OF TITLE LENDERS (1) The department may ~~shall~~ conduct an examination of each title loan licensee's lending operations to ensure compliance with both statutes and administrative rules.

(2) The department may examine the records or any location where records may be found of any licensee or a person who may be in violation of Title 31, chapter 1, part 8 or these rules.

~~(2)~~ (3) The examination shall consist of a comprehensive review of the records, operations, and affairs of the licensee. The review shall include, but is not limited to, inquiry into:

(a) through (b)(iii) remain the same.

(4) The department shall provide the licensee with an oral and written report which details the areas examined and any deficiencies found.

AUTH: 31-1-802, MCA

IMP: 31-1-803, 31-1-810, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-819, 31-1-820, 31-1-821, 31-1-822, 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend section (1) in order to make it clear that the division has the authority to examine title lenders but not a mandatory duty to do so. The division does not have sufficient staff to examine every title lender licensed in Montana each year. The second part of section (1) is to make both statute and rule plural.

The division proposes to add section (2) to clarify its authority and procedure in conducting examinations of licensed title lenders. This authority and discretion to conduct these examinations is specifically authorized under 31-1-810, MCA. In examining licensees, the division has encountered situations where records are in garages, trunks of cars, and plastic bags. The rule is intended to make clear that the division may examine the records of licensees and unlicensed persons wherever the records may be found.

The division proposes to amend section (3) so that the division is able to examine information that will allow it to do its job. For instance, there may be additional records that are not listed which must be examined in order to determine if the licensee is complying with the Truth in Lending Act. The division must have the flexibility to examine all relevant records in conducting examinations.

The division proposes to add section (4) which embodies the practice that the division has followed for many years, but the practice has never been set forth in the rules.

2.59.1409 DURATION OF LOANS – INTEREST –~~EXTENSIONS~~ (1) and (2) remain the same.

(3) ~~On any loan containing an automatic 30-day renewal provision, at the time of each renewal~~ On the business day following either the end of the original 30-day loan period, or the end of any agreed upon 30-day renewal period, licensees must provide, in person or by mail at the borrower's last known address, ~~an updated truth-in-lending statement~~ a statement disclosing the finance charges that will accrue with the renewal, the new maturity date of the loan, the amount financed, and the

annual percentage rate (APR). Licensees may not collect interest on the renewal without proof of having provided the borrower such a statement.

(4) Interest may not compound from one ~~extension~~ or renewal to another.

(5) Interest accrues on a daily basis.

(6) Interest may not be collected before it accrues.

(7) Interest may not be charged on fees.

(8) A licensee may not continue to accrue interest after the expiration of a title loan agreement, after the period of renewal, or after the redemption date of the loan.

~~(5)~~ (9) A licensee shall not extend or grant any additional credit other than that which was granted in the original title loan agreement without first requiring full payment of all principal and interest due on the original title loan, ~~or any~~ and all subsequent ~~extensions~~ renewals, and releasing the security interest in the titled property.

(6) remains the same, but is renumbered (10).

(11) Licensees shall apply payments to interest and principal in the following order:

(a) first, to accrued interest; and

(b) then, to principal.

AUTH: 31-1-802, MCA

IMP: 31-1-816, 31-1-817, 31-1-818, 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend ARM 2.59.1409 to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals." Therefore it is necessary to amend the rule to use the same language as the statute.

The division is proposing to delete the phrase "On any loan containing an automatic 30 day renewal provision" to make clear that both automatic renewals and manual renewals are subject to the requirement set forth in the remainder of section (3). The division is proposing to add a specific timeframe for the notice, which is the business day following either the end of the original 30-day agreement period, or the end of any agreed-upon 30-day renewal period rather than "at the time of each renewal." At the time of each renewal is vague in that a licensee could wait several days after the redemption period ends to renew a loan. The Act provides that upon the failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender. The Act does not allow the lender to simply hold the loan in suspense after the end of the original 30-day agreement or the end of any agreed upon 30-day renewal. So this timeframe is being proposed to make clear that the renewal must be agreed upon, or the loan must be placed into default, the next business day after the loan period has run. The division proposes to amend section (3) to clarify exactly what must be provided to a borrower on renewal. The division has found that licensees do not understand what a truth in lending statement is. The rule is being redrafted to define exactly what must be disclosed to the borrower by the lender on renewal.

The division proposes section (5) because there is widespread confusion about interest as allowed by the Act. In conducting examinations, the division has seen lenders adopt practices contrary to each section of this rule. The new sections are intended to clarify how interest and fees are treated under the Act and how payments are to be applied to amounts owed by borrowers. Some title lenders believe that the interest they charge for a 30-day title loan is a fee, not interest. So, for instance, if a borrower comes in to pay off the title loan early, the title lender will charge the borrower the full principle balance owed, plus all interest that would have accrued if the loan had gone to the redemption date without being paid. The division believes that if a borrower comes in on the 25th day to pay off a title loan which is due on the 30th day, the borrower should be charged for 25 days of interest, not 30 days of interest. Sections (5) and (6) are designed to address the situation of a borrower who pays off a title loan early.

Section (7) clarifies that fees are a separate category on which interest may not be charged. A title lender may not roll fees into the principal amount owed and charge interest on the fees.

The division is proposing section (8) because some title lenders believe that the interest owed on a title loan continues to accrue until the obligation is repaid. This is clearly harmful to borrowers since the title lender could take no action to declare the loan in default and need not proceed to collection since the title lender would be accruing interest for the period after it became clear that the loan was in default but before the titled personal property was possessed and sold. The purpose of the Act is to protect consumers from abuses that occur in the credit marketplace when lenders are unregulated. In addition, the lender could simply wait for 30 days after the loan matured to see if a borrower would come in to renew a loan because the interest would still be accruing on the obligation. The division believes that lenders should not be allowed to accrue or collect interest after the redemption date of the loan.

Section (11) is designed to provide guidance on how payments made by borrowers should be allocated to outstanding obligations owed. The division has seen situations where title lenders apply a payment to interest that has not yet accrued instead of to interest accrued then to principal. The division proposes to standardize the manner that payments are applied to interest and principal under the Act. This will allow all licensees to know how the division expects licensees to apply payments to interest and principal owed.

2.59.1410 EXTENSIONS RENEWALS - REDUCTION OF PRINCIPAL

~~(1) Subject to (2), beginning with the sixth extension and for each subsequent extension, the borrower must pay at least 10% of the original principal amount along with all accrued interest before an extension may be granted.~~

(2) and (2)(a) remain the same, but are renumbered (1) and (1)(a).

(b) reduce the amount of principal balance used to calculate interest by 10% every 30 days beginning 180 days from the beginning of the original title loan agreement. In such event, the licensee must comply with all the requirements of ARM 2.59.1409 for extensions renewals.

~~(3) (2)~~ Under no circumstances may a licensee charge interest or fees beyond the fifteenth ~~extension~~ renewal.

AUTH: 31-1-802, MCA

IMP: 31-1-816, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to repeal section (1) of the rule because it unnecessarily repeats the language of 31-1-816, MCA.

The division proposes to amend section (2) to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals." Therefore, the rule is being changed to be consistent with the statute.

2.59.1413 REPORTS (1) through (1)(b) remain the same.

(c) all ~~officer~~ questionnaires must be answered within ten days of the ~~end~~ exit of any the examination.

AUTH: 31-1-802, MCA

IMP: 31-1-810, 31-1-815, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend ARM 2.59.1413 in order to ensure that the questionnaires are received in a timely manner so that the examination may be concluded and the final report written and issued to the licensee. The questionnaire is a form that the division asks all licensees to complete and return to the division. The questionnaire asks the licensees to disclose the individuals or entities that are its owners, officers, partners, directors, trustees, or principal officers. It asks for disclosure of relevant criminal and civil histories of the individuals or entities involved. It is used to determine if the business is compliant with 31-1-805, MCA. The division has found that the current wording of the rule is confusing because some licensees interpret the end of the examination as the date the examination report is received by them, not the exit date when the examiners leave the examined premise and give an oral report to the licensee.

2.59.1414 SCHEDULE OF CHARGES (1) remains the same.

(a) the interest rate for each 30-day period;

(b) through (d) remain the same.

(e) a statement that storage fees and repossession ~~fees shall~~ costs may be added to the amount due based upon actual cost of these services to the licensee.

(2) remains the same.

AUTH: 31-1-802, MCA

IMP: 31-1-816, 31-1-817, 31-1-818, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to reflect that the interest rate which should be disclosed to the applicant is the interest rate for each 30-day period, not the annual percentage rate. The Act uses the concept of 30-day periods throughout, not annual periods. The

applicant needs to know the actual interest they would be charged if they enter into the agreement in a manner that can be readily understood and applied to the loan they seek. Section 31-1-818, MCA, requires the title loan agreement to contain a disclosure that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower. The intent of the amendment to this rule is to make the rule consistent with the language of the statute so "fees" is being changed to "costs." In addition, lenders may not charge storage and repossession costs in all cases; for instance, they may not charge storage and repossession costs for in-state repossessions but they may charge such costs for out-of-state repossessions. If the lender would ever charge the costs, under any circumstances, the lender should disclose that fact to the applicant. The mandatory language "shall" is being changed to "may" to reflect that the costs must be disclosed even if they may only be charged under certain circumstances.

2.59.1417 PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee or any unlicensed entity or person, hearings and related discovery shall be conducted pursuant to the done ~~under the~~ Montana Administrative Procedure Act ~~implementing the revised as~~ implemented by the Attorney General's Model Rules effective June 4, 1999.

(2) remains the same.

AUTH: 31-1-802, MCA

IMP: 31-1-811, 31-1-812, 31-1-826, 31-1-841, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to include a reference to enforcement actions taken against unlicensed entities. This amendment was passed as part of Senate Bill 74 during the 2007 Regular Legislative Session. The remainder of the amendment to this rule is proposed to correct the reference to the Montana Administrative Procedure Act implementing the Attorney General's Model Rules.

4. The proposed new rules provide as follows:

NEW RULE I TITLE LOAN DESIGNATION (1) The department designates that a title loan is:

(a) a nonpurchase money loan secured by an unencumbered state issued title to personal property;

(b) on which the annual percentage rate exceeds 35%; and

(c) the lender does not take physical possession of the titled personal property.

(2) If a loan meets the criteria set forth in (1), the entity making it must be licensed as provided in Title 31, chapter 1, part 8, MCA, and must comply with the provisions of Title 31, chapter 1, part 8, MCA, and these rules, except as provided in 31-1-802(5), MCA.

AUTH: 31-1-802, MCA

IMP: 31-1-803, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes NEW RULE I to designate a title loan because in 2003, when the Act was amended by the Legislature, approximately one-half of the entities that had been licensed as title lenders switched their licenses to consumer loan licenses in order to evade the provisions of the Act which cap interest rates that title lenders can charge and prohibit title lenders from suing borrowers for deficiency judgments owed after the titled personal property is repossessed and sold. While the lenders continued to make loans using titled personal property as collateral, they altered the term of the loan so that the loan did not fit within the 30-day, single-payment structure of a title loan. Entities making title loans should be licensed as title lenders and subject to the interest rate caps and the prohibition against suing the borrower individually for a deficiency judgment for amounts owed after the collateral for the loan has been seized and sold.

In the 2007 Legislative Session, the Legislature amended the definition of title loan in 31-1-803(8), MCA, to read, "a nonpurchase money loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property that is designated as a title loan by the department." The division proposes to designate a title loan as a nonpurchase money loan since the borrower already owns the titled personal property being used as collateral for the loan. The loan is not made to secure the purchase of the titled personal property, rather the titled personal property is collateral for the loan. The rule repeats the statutory language of 31-1-803(8), MCA. However, it is necessary in this context to repeat the language of 31-1-803(8), MCA, in order to designate what a title loan is. Therefore, the rule is not unnecessarily repeating the language of the statute. The division has designated a title loan as having an annual percentage rate that exceeds 35%. Because of the short term of the loan, typically title loans have annual percentage rates that exceed 35%. The division has designated title loans as being secured by state-issued certificates of title to personal property because that is the distinguishing feature of a title loan. The last sentence of this rule is intended to distinguish a title loan from a pawn. In a title loan, the lender does not take physical possession of the titled personal property. In a pawn, the pawnbroker does take physical possession of the titled personal property.

If a loan meets the criteria set forth in this rule, it is a title loan and it is subject to the Act. Any entity making a title loan as defined in NEW RULE I must be licensed as a title lender and comply with the Act and these rules. The exemption set forth in 31-1-802(5), MCA, states that the Act does not apply to a person that makes less than four loans per year and complies with the provision of Title 31, chapter 1, part 1, MCA.

NEW RULE II NOTIFICATION TO THE DEPARTMENT (1) The licensee shall notify the department by the close of business on the business day following:

- (a) a change in the physical location of the office;
- (b) any change in the phone number of the business;
- (c) a change in the nature of the business;

- (d) any change in the board of directors, principal officers, trustees, or limited liability company managers or member-managers;
- (e) the acquisition or disposition of another company;
- (f) any civil action involving fraud or dishonesty filed against the licensee;
- (g) any criminal charge involving fraud or financial dishonesty filed against the licensee;
- (h) any change which would cause the department not to issue a license, if it had occurred before licensure; and
- (i) the addition of other business to be conducted at the location.

AUTH: 31-1-802, MCA

IMP: 31-1-805, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE II to ensure that the information-related changes in a licensee's ownership, business operations, contact information, and character and fitness are promptly reported to the division. This next day reporting is reasonably necessary given that this information is critical to the daily operations and financial stability of a licensee. The division has encountered numerous situations in which licensees change their business location, change ownership, change business plans, and start selling some new product(s) or have significant civil or criminal judgments entered against them but they fail to notify the division of these facts. The division proposes to have licensees notify it of changes that can affect licensure by the close of business on the next business day following the event.

NEW RULE III RESCINDED LOANS (1) The licensee shall keep all records required by 31-1-821, MCA, for rescinded loans in a separate file and retain those records according to records retention schedules as set by state or federal law, whichever is longer.

AUTH: 31-1-802, MCA

IMP: 31-1-815, 31-1-816, 31-1-821, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to adopt this new rule because it has found that licensees do not keep records of rescinded loans. When the division does examinations, one of the areas that it examines is rescinded loans to verify that licensees provide borrowers the right to rescind their loan as provided by 31-1-816(2)(b)(ii), MCA. The division has found that some title lenders do not keep records of rescinded loans since the loans did not go to the maturity or redemption date. This rule is intended to make clear that records of rescinded loans are subject to the record keeping requirements in 31-1-821, MCA. The records should be kept in a separate file from loans that are not rescinded since they are not active loans. This allows the licensees to keep inactive loans out of their files and allows the examiners to check to see if the licensee is complying with all provisions of the Act.

NEW RULE IV FAILURE TO CORRECT DEFICIENCIES (1) The department may suspend or revoke a license of an entity as provided in 31-1-811, MCA, that does not correct the deficiencies found by the department after an examination within the time frame granted by the department.

AUTH: 31-1-802, MCA

IMP: 31-1-810, 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division has examined licensees several years in a row to find the same violations of Montana law exist year after year. Each year the division notes the deficiencies and the business says it will correct the deficiencies, but does not do so. The division seeks to clarify that repeated failure to address violations of Montana law which have been documented and noted for corrective action after an examination will result in loss of license. Of course, as with any action against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act prior to any action affecting his or her license as provided in 31-1-811, MCA.

NEW RULE V DEPARTMENT'S COST OF ADMINISTRATIVE ACTION

(1) The department may order reimbursement of its costs of bringing the administrative action which may include but are not limited to:

- (a) examiner time charges;
- (b) department legal counsel time charges;
- (c) administrative law judge charges;
- (d) court reporter costs;
- (e) transcription fees;
- (f) document preparation fees;
- (g) other hearing costs;
- (h) costs of subpoenaing documents;
- (i) any other cost is incurred by the department in bringing the action; and
- (j) travel costs.

AUTH: 31-1-802, MCA

IMP: 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE V to clarify which types of costs may be reimbursed to the division in the course of bringing an administrative action against a title lender. This reimbursement was authorized by an amendment made to 31-1-811, MCA. This amendment was part of Senate Bill 74, which was passed during the 2007 Regular Legislative Session. Of course, as with any action against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act prior to the imposition of any sanction.

NEW RULE VI EXAMINATION FEES (1) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the title

lender may be suspended or revoked as provided by 31-1-811, MCA, until the fees are paid.

AUTH: 31-1-802, MCA

IMP: 31-1-810, 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to adopt NEW RULE VI to ensure that a title loan licensee remits payment for examinations conducted by the division in a timely manner. The division is authorized to charge an examination fee to licensees pursuant to 31-1-810, MCA. The division is funded by the examination fees that it charges to licensees. The division often receives bad checks or no checks at all from licensees for examination fees. The division cannot operate without these fees. Of course, as with all other actions against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act as provided by 31-1-811, MCA, before an adverse action can be taken against a license.

NEW RULE VII REQUIRED RECORD KEEPING (1) Each licensee shall keep the following records, accounts, and books for a minimum of 24 months from the date the loan agreement was signed by the borrower, or longer if required by federal law:

- (a) all loan documents signed by or given to the borrower;
- (b) all loan application documents;
- (c) all records of payments made by the borrower, including the date and amount of the payment;
- (d) account files detailing the application of borrower payments to interest, principal, and other fees;
- (e) account files recording the accrual of interest updated every 30 days;
- (f) copies of loan renewal agreements and disclosures;
- (g) copies of paid loan agreements;
- (h) invoices for repossession, towing, and storage of titled personal property;
- (i) an accurate statement or photograph that documents the condition of the titled personal property after repossession but before sale; and
- (j) the bill of sale of repossessed titled personal property.

AUTH: 31-1-802, MCA

IMP: 31-1-815, 31-1-821, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE VII because when it conducts examinations, the division has found that some licensees do not keep proper records and do not know what records are proper to keep. The listed records must be available to the division's examination staff in order to ensure that the transactions also comply with all provisions of the Act. The division cannot determine if a licensee is complying with the Act if the business does not keep appropriate records. The division is proposing the new rule on documenting the condition of the property after repossession but before sale. The division has reviewed files in which title lenders have sold repossessed motor

vehicles to a salvage dealer for \$25. Depending on the condition of the motor vehicle, this may or may not be a commercially reasonable sale. The lenders need to document the condition of the titled personal property before sale in order to prove that the sale was conducted in a commercially reasonable manner and protect themselves from allegations that the lender deprived the borrower of value that they should have had returned to them after sale.

NEW RULE VIII SALE OF REPOSSESSED PROPERTY (1) The sale of repossessed titled personal property shall be conducted in a commercially reasonable manner.

AUTH: 31-1-802, MCA

IMP: 31-1-816, 31-1-818, 31-1-820, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE VIII because in conducting examinations, it has found one company that sold every repossessed motor vehicle to the salvage yard for \$25. While it may be commercially reasonable in some cases to dispose of titled personal property in this manner, it is unlikely that every vehicle was worth only the salvage value. Title lenders must refund the surplus received after sale to the borrower after the title loan and all expenses related to it have been repaid. The failure to conduct a repossession sale in a commercially reasonable manner could deprive the borrower of surplus funds due after repossession. The concept of commercially reasonable manner comes from the Uniform Commercial Code 30-9A-610, MCA, which is applicable to all commercial transactions involving sale of property after default, including those under the Act. All sales of repossessed property are required to be conducted in a commercially reasonable manner. The division believes that it is necessary to have this directly applicable by rule in order to remind our licensees that they must comply with the Uniform Commercial Code in a title loan transaction as well as to protect borrowers who may be entitled to have the surplus amount returned to them after the titled personal property has been repossessed and sold.

NEW RULE IX UNFAIR PRACTICE (1) It is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days.

AUTH: 31-1-802, MCA

IMP: 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE IX because in conducting examinations, the division has found that some title lenders will let loans continue to accrue interest and penalties month after month when the borrower has not made a payment and it is clear that the borrower is unable to make a payment. If the borrower has not been able to make any payment toward either principal or interest for 60 days, they cannot repay the loan and the loan should be placed into default and the collateral repossessed. Renewing a loan on which no payment has been made for 60 days means the

lender is accruing more interest and fees that will ultimately be taken out of the proceeds of sale. If the loan is called after 60 days, it is at least possible that the borrower may be entitled to some of the proceeds of the sale of the titled personal property.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., June 6, 2008.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Larry Jent, the primary bill sponsor of SB 74 (2007), was notified on July 27, 2007, by U.S. mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Denise Pizzini
Denise Pizzini, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 28, 2008.